

Brad T. Summers, OSB No. 911116
tsummers@balljanik.com
David W. Criswell, OSB No. 925930
dcriswell@balljanik.com
BALL JANIK LLP
101 SW Main Street, Suite 1100
Portland, OR 97204
Telephone: (503) 228-2525
Facsimile: (503) 295-1058

Attorneys for Kenneth S. Eiler, Chapter 11 Trustee

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON**

In re

**THE MICHAEL KING SMITH
FOUNDATION,**

Debtor.

Case No. 16-30233-rld11

**NOTICE OF FILING OF COMPETING
BID OF GEMCAP LENDING I, LLC**

Attached hereto as Exhibit A is a copy of the competing bid submitted by GemCap Lending I, LLC.

DATED: August 4, 2016

BALL JANIK LLP

By: /s/ Brad T. Summers

Brad T. Summers
tsummers@balljanik.com

Attorneys for Kenneth S. Eiler,
Chapter 11 Trustee

ASSET PURCHASE COMMITMENT LETTER AGREEMENT

This Asset Purchase Commitment Letter Agreement (this "Agreement") is made and submitted s of this 1st day of July 2016 by GEMCAP LENDING I, LLC, ("GemCap") to KENNETH S. EILER AS THE CHAPTER 11 TRUSTEE OF THE MICHAEL KING SMITH FOUNDATION.

RECITALS

WHEREAS, on January 26, 2016, The Michael King Smith Foundation ("MKSF") filed a voluntary Chapter 11 bankruptcy petition in the United States Bankruptcy Court for the District of Oregon (the "Bankruptcy Court") as Case Number 16-30233-rld11; and

WHEREAS, on May 12, 2016, the Bankruptcy Court approved the retention of Kenneth S. Eiler as the Chapter 11 Trustee for MKSF (the "Trustee"); and

WHEREAS, on June 7, 2016, the Trustee filed a motion (the "Sale Motion") to sell substantially all of the MKSF assets to The Falls Event Center LLC ("TFEC") pursuant to a letter of intent from TFEC attached to the Sale Motion (the "LOI"); and

WHEREAS, the Sale Motion provides for higher or better competing bids to be submitted on or before July 1, 2016; and

WHEREAS, on June 22, 2016, the Trustee filed an Asset Purchase Agreement between the Trustee and TFEC whereby the Trustee, on behalf of MKSF, is selling substantially all of the MKSF assets to TFEC (the "TFEC APA");

WHEREAS, the TFEC APA contains due diligence conditions that have not been waived and there is no certainty that the TFEC APA will close; and

WHEREAS, GemCap is submitting this Agreement as a competing bid which does not contain diligence conditions.

NOW, THEREFORE, GemCap submits the following:

1. **Assets Purchased.** All of the real and personal property assets owned by MKSF, including, without limitation, the following: (i) all real estate, buildings, structures, improvements, crops and fixtures owned by MKSF, including, without limitation all of the items described in (I) A.1, A 2 and A.3 on the 'ATTACHMENT A TO EASM-TFEC-STEVE DOWN LETTER OF INTENT' (which is attached to the sale Motion and a copy of which is attached hereto as Exhibit A), (II) the items described in the definition of 'Property' (as defined in the TFEC APA) that consists of real estate, buildings, structures, improvements, crops and fixtures; (III) all rights and benefits appurtenant to, or associated with, MKSF's real estate, buildings, structures, improvements, crops and fixtures, including, without limitation, all entitlements, permits, approvals, easements, water and mineral rights, development rights, plans, maps, warranties, guaranties, licenses,

governmental approvals and certificates which benefit the real estate, buildings, structures, improvements, crops and fixtures (all of the items described in (i) are collectively referred to as the "Real Property"); (ii) all tangible and intangible personal property owned by MKSF, wherever located, including, without limitation, (I) all of the items described in A.4, A.5, A.6, A.7, B, C., D, E, F. on the 'ATTACHMENT A TO EASM-TFEC-STEVE DOWN LETTER OF INTENT'; (II) the items described in the definition of 'Property' (as defined in the TFEC APA) that consists of tangible and intangible personal property; (III) the 747 located on top of the Waterpark roof and waterfall slides; (IV) all intellectual property including domain names, trademarks, patents and copyrights; (V) Chapter 5 causes of actions under the Bankruptcy Code and recoveries; (VI) the lease between Evergreen Aviation and Space Museum and The Captain Michael King Smith Educational Institute (the "Museum") and the Museum regarding the Waterpark as amended (the "Waterpark Lease"); (VII) the lease between the Museum and MKSF regarding the Space Museum, as amended (the "Space Museum Lease" and together with the Waterpark Lease, the "Leases"); (VIII) all operating and other agreements between the Museum and MKSF regarding the Waterpark and the Space Museum (the "Other Agreements" and together with the Leases, collectively, the "Museum Agreements"); (IX) all monetary and non-monetary obligations of the Museum to MKSF pursuant to the Museum Agreements; (X) the agreement between MKSF and Creekside Valley Farms for management of the agricultural land; (XI) all other agreements and contracts with MKSF as requested by GemCap; (XII) all deposits and unpaid rental payments due for the current and prior years pursuant to any agreement with MKSF; (XIII) all other tangible and intangible personal property of MKSF; and (XIV) all claims against the trustees of MKSF and the recoveries thereof (all of the items described in (ii) are collectively referred to as the "Personal Property" and together with the Real Property, collectively, the "Purchased Assets").

2. **Deposit.** A credit bid deposit in the amount of \$100,000 of GemCap's secured claim against MKSF and its estate.
3. **Purchase Price.** The purchase price for the Purchased Assets is as follows: (i) the secured judgment claim due to Hoffman Construction shall be paid in full in cash (such amount is estimated to be \$2,288,000 as of July 15, 2016); (ii) a credit bid of GemCap's secured claim against MKSF and its estate in the amount of \$1,000,000; (iii) the amounts owing to the Trustee and the Trustee's counsel shall be paid in full in cash. The cash portion of the Purchase Price shall be paid at the Closing.
4. **Remaining Liens on Purchased Assets.** The lien of the Yamhill County Tax Collector shall remain on the Real Property. At the Closing, all other liens and claims on the Purchased Assets shall be removed and released and GemCap shall purchase the Purchased subject only to the lien on the Real Property held by the Yamhill County Tax Collector.
5. **Due Diligence.** GemCap does not require a due diligence period.
6. **Conditions to Closing.** GemCap shall have the benefit of, and rights to, all of the items set forth in Section 4.1 of the TFEC APA except for Section 4.1.1 as GemCap does not require a due diligence period.

7. **Closing Date and Closing Conditions.** GemCap agrees to close in accordance with Section 5 of the TFEC APA as modified by the terms of this Agreement.
8. **TFEC APA Contract Modification.** GemCap and the Trustee shall promptly execute a mutually agreeable Asset Purchase Agreement and such other documents consistent with the TFEC APA as modified by the terms of this Agreement.
9. **Sale of Purchased Assets after Closing.** After the Closing, GemCap shall have the right to sell any of the Purchased Assets and shall have the right to commence all claims against the Museum for all monetary and non-monetary obligations of the Museum pursuant to the Museum Leases, including the right to terminate the Museum Leases.

IN WITNESS WHEREOF, GemCap has executed this Agreement as of the date first above written.

GEMCAP LENDING I, LLC

By: _____

David Ellis, Co-President

EXHIBIT A

[ATTACHMENT A TO EASM-TFEC-STEVE DOWN LETTER OF INTENT]

{00295270.DOCX; 1}

ATTACHMENT A TO EASM-TFEC-STEVE DOWN LETTER OF INTENT

- A. It is understood and acknowledged that TFEC will acquire the following MKSF assets in the Bankruptcy Purchase:
1. The Waterpark, the Chapel, the hotel site, the Space Building, and all real property on Tax Lot 1300, in accordance with the new lot lines as adjusted by the Yamhill County Tax Assessor.
 2. All real property located on Tax Lots 400, 800, and 1400, in accordance with the new lot lines as adjusted by the Yamhill County Tax Assessor.
 3. The Bansen Hay Cover and the Bansen Barn.
 4. The following aircraft:
 - a. FG-1D Corsair (1945 model)
 - b. P-51D Mustang (1944 model)
 - c. PBYS-A
 - d. Ryan Spirit of St. Louis - Replica
 - e. DC 3
 - f. FW-190A Replica
 - g. Ryan ST3KR #2161
 - h. Cassutt Racer
 - i. Cloud Dancer ¾ scale JN-4 Jenny (homebuilt)
 5. The personal property located in the Waterpark, Space Museum, and Chapel, following miscellaneous personal property located in or about the buildings on campus, which are identified on Schedule 1 (Excel Spreadsheet Tab 1). "Personal property" is intended to mean all assets that are not real property, buildings, or aircraft.
 6. Any other personal property that is located in the Space Building, Waterpark, or Chapel that is not otherwise listed in one of the attached Schedules, which shall be addressed in a residual clause in the APA.
 7. Any and all easements, express or implied, granted by Affordable Mid Coast Housing and/or George Schott to MKSF or implicitly acknowledged or recognized by Affordable Mid Coast Housing or George Schott to allow MKSF and its lessees access to the Space Building, the Chapel and the Waterpark and all real property located on Tax Lot 1300 as adjusted.
- B. The Parties further acknowledge that personal property currently located in the Space Museum, Waterpark and Chapel and identified on Schedule 2 (Excel Spreadsheet Tab 2) is owned by and the property of the Museum, and shall not transfer to TFEC or Down unless by separate agreement
- C. The Parties further acknowledge that certain personal property located in or on the Waterpark which is currently owned by the Museum and identified on Schedule 3 (Excel Spreadsheet Tab 3) will transfer to TFEC, free and clear of all liens and encumbrances, for other consideration relating to transfer of Waterpark operations to TFEC and memorialized in a separate agreement.

- D. The Parties further acknowledge that certain personal property and electronic equipment located in Rooms 208, 209, and 210 of the Space Building and identified on Schedule 4 (Excel Spreadsheet Tab 4) are the property of the Civil Air Patrol, McMinnville Squadron (Rooms 209 and 210) or Aero Innovation (Room 208), but that such property the tables, desks, chairs and file cabinets in each room and such tables, desks, chairs and file cabinets shall be included in the APA residual clause. The Parties further acknowledge that the assets identified on Schedule 4 and located on the Museum campus grounds are not subject to transfer as a result of acquisition and title shall remain with the assumed owner(s) or will be transferred in accordance with the circumstances of each asset and in accordance with Oregon law.
- E. The Parties further acknowledge that personal property and artifacts identified in Schedule 5 are on loan to the Museum from the Kansas Cosmosphere and/or the Smithsonian Institute and shall not be transferred or assigned to TFEC.
- F. The Parties further acknowledge that the Museum owns personal property, including but not limited to, desks, furniture, computers, office equipment and supplies, displays, artifacts, and archives, that are located in the Theater Building and/or the Aviation Building, and such property is specifically excluded from any assets that would transfer to TFEC or Down.

The rest of this page left blank intentionally.

CERTIFICATE OF SERVICE

I hereby certify that I served copies of the foregoing **NOTICE OF FILING OF
COMPETING BID OF GEMCAP LENDING I, LLC** on all ECF participants through the Court's Case Management/Electronic Case File system, and on the following parties by mailing a full, true and correct copy in a sealed first-class postage prepaid envelope, addressed to the parties listed below, and deposited with the United States Postal Service at Portland, Oregon on the date set forth below:

Henderson Bennington Moshofsky P.C.
4800 SW Griffith Dr #350
Beaverton, OR 97005

DATED August 4, 2016

/s/ Linda Reed
Linda Reed, Paralegal and Legal Assistant